

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EMILIANO MORENO,

Plaintiff,

v.

No. 18-cv-0014 JB/SMV

BETTY JUDD and FNU LNU,

Defendants.

ORDER GRANTING LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915(b)
AND TO MAKE PAYMENTS OR SHOW CAUSE

THIS MATTER is before the Court on Plaintiff Emiliano Moreno's Application To Proceed In District Court Without Prepaying Fees or Costs [Doc. 5] and inmate trust account statement [Doc. 7]. Based on the financial information provided by Plaintiff, the Court finds that Plaintiff is unable to prepay the \$350 filing fee¹ in this civil rights action and, therefore, Plaintiff's application will be granted.

Because Plaintiff was a prisoner at the time his Prisoner's Civil Rights Complaint was filed, he is "required to pay the full amount of [the] filing fee." § 1915(b)(1). Pursuant to § 1915(b)(1), Plaintiff is required to make an initial partial payment of "20 percent of the greater of—(A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint" § 1915(b)(1). After payment of the initial partial payment, Plaintiff is "required to make monthly payments of 20 percent of the preceding month's income credited to the

¹See 28 U.S.C. § 1914 (a) ("The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal, or otherwise, to pay a filing fee of \$350").

prisoner's account." § 1915(b)(2).

Plaintiff's inmate trust account statement reflects that the average monthly deposits in his inmate account exceed his average monthly balance. *See* [Doc. 7]. The average monthly deposits in Plaintiff's inmate account are \$97.71, 20% of which is \$19.54. Therefore, the Court shall assess an initial partial payment in the amount of \$19.54 pursuant to § 1915(b)(1)(A). The initial partial payment must be submitted to the Clerk of the Court within 30 days of the date of entry of this order.

The Court will not review the merits of Plaintiff's Prisoner's Civil Rights Complaint unless the initial partial payment is paid or excused. If Plaintiff fails to make a payment by the designated deadline or show cause why such payments should be excused, his Prisoner's Civil Rights Complaint may be dismissed without prejudice without further notice.

IT IS THEREFORE ORDERED that Plaintiff's Application To Proceed In District Court Without Prepaying Fees or Costs [Doc. 5] is GRANTED.

IT IS FURTHER ORDERED that, within 30 days from the date of entry of this order, Plaintiff send to the Clerk of the Court an initial partial payment in the amount of \$19.54 or show cause why the payment should be excused.

IT IS FURTHER ORDERED that the Clerk provide Plaintiff with two copies of this Order, and that Plaintiff make the necessary arrangements to attach one copy of this Order to the check in the amount of the initial partial payment.

IT IS FURTHER ORDERED that, after payment of the initial partial fee, Plaintiff make monthly payments of 20% of the preceding month's income credited to his account or show cause

why the designated payments should be excused.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'S. Vidmar', is positioned above a horizontal line.

STEPHAN M. VIDMAR
United States Magistrate Judge